

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 101 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JIVLABHAI CHOTUBHAI

Versus

SHANKERBHAI B PATEL

Appearance:

MR DN PANDYA for appellants

No one has appeared on behalf of respondents

Nos.1 and 2.

Mr.A.R.Mehta for respondents No.3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/08/2000

ORAL JUDGEMENT

This Appeal is directed against the Award dated
5.11.79 passed by the M.V.Claims Tribunal, Valsad at

Navsari in M.V. Claim Petition No.84/78 whereby the Claim Petition was partly allowed with proportionate cost and the respondents Nos.1 and 2 herein were held to be jointly and severally liable to pay the sum of Rs.21,000/- with proportionate cost together with interest at the rate of 6% per annum from the date of the Application till realisation.

On 29.1.78 at about 6.0 P.M. the respondent No.1 Shankerbhai Budhabhai Patel, who was driving the motor cycle No.GTN-4305 knocked down Chhotu Jivla just opposite to Kirti Chemical situated in Village Lilapore. Said Chhotu Jivla was taken to Kasturba Hospital, Valsad where he died on 31.1.78. The deceased was about 50 years of age and was the only bread earner in the family, he was earning a sum of Rs.150/-- P.M. and the claimants stated that he could have survived and helped the family for another 25 years. That the claimants were his dependents and they sustained shock on account of the death of the head of the family. The claimants filed petition for a sum of Rs.30,000/-. The Tribunal found that the deceased, who was earning a sum of Rs.150/-- P.M., was spending Rs.50/-- per month on himself and, therefore, taking the income to be Rs.100/-- P.M. for the purpose of compensation, calculated the annual income at the rate of Rs.1200/-. Looking to the age of the deceased to be 50 years, the multiplier of 15 was applied, on the basis of which the compensation came to Rs.18,000/-. Rs.3000/were granted for estate and accordingly Award was passed for a sum of Rs.21,000/-- after holding that the opponent No.1 was driving the motor cycle No.GTN 4305 on 29.1.78 rashly and negligently and thereby caused the death of Chhotu Jivla.

Learned counsel for the appellants has submitted that the claimants are the son, widow and 2 daughters. It has been submitted that the Tribunal did not consider the question of awarding compensation for the pain, shock and suffering of the deceased for a period of 3 days i.e. from 29.1.78 to 31.1.78 and it has also been pointed out that in the body of the order in Para 2 the Tribunal wrongly mentioned that Chhotu Jivla i.e. the deceased had died on the spot, although immediately thereafter it has been mentioned that he was admitted to Kasturba Hospital at Valsad and died on 31.1.78. It has also been stated that the amount of Rs.50/- P.M., which the deceased was getting as over time, has also not been taken into consideration.

Having heard learned counsel, I do find that Jivla Chhotu, who was examined at Exh.40, had stated that the deceased was getting Rs.50/- P.M. as over time as

and when he was required to do the over time. However, it is not given out as to how many days in a month the deceased was doing the over time work and, therefore, it is not possible to calculate as to what could be his monthly income after adding his over time earning. Since no details about the over time had been given, it is not possible to enhance the amount of compensation by any certain amount against this item, yet it has to be kept in view.

So far as pain, shock and suffering is concerned, it is very clear that the deceased met with the accident on 29.1.78 and expired on 31.1.78 and certain amount of compensation ought to have been granted against this item under the said head.

The deceased is survived by a son, 2 daughters, out of which one was of marriageable age at that time, and the widow. Jivla Chhotu, who was examined at Exh.40, had stated that deceased was spending Rs.40/- P.M. for himself and was giving remaining amount to the family, yet the Tribunal proceeded to take that the deceased was spending Rs.50/- after him and calculated the monthly income to be Rs.100/- only for the purpose of compensation whereas it should have been taken at the rate of Rs.110/- P.M. and in that case, the amount of compensation against the item of the income with the multiplier of 15 would have been Rs.1320/-- $\times 15 =$ Rs.19,800/-. It is, therefore, clear that the amount of compensation of Rs.18,000/- deserves to be enhanced to Rs.19,800/- and the same can be rounded up to Rs.20,000/-, keeping in view that the deceased could have earned something by way of over time also.

So far as the sum of Rs.3000/- which has been granted against the estate i.e. expectancy of life is concerned, I find that this is too less an amount for the purpose of expectancy of life. This amount also deserves to be enhanced from Rs.3000/- to Rs.5000/-.

So far as the question of pain, shock and suffering is concerned, in view of the fact that the deceased had met with the accident on 29.1.78 and expired on 31.1.78 on account of the injuries sustained by him, he must have suffered pain and shock for 3 days and it will be appropriate to award Rs.5000/- against pain, shock and suffering. Thus, the total amount of compensation comes out to be Rs.20,000/- + Rs.5000/-- + Rs.5000/-- against the items, as aforesaid, making the total of Rs.30,000/- and the Award, as passed by the

Tribunal on 5.11.79, is hereby modified accordingly. The appellants would, therefore, be entitled to a further sum of Rs.9000/- in addition to the amount of Rs.21,000//-, for which the Award had been passed. Mr. Pandya has not been able to show as to whether the amount, as was awarded by the Tribunal, has been received by the claimants in terms of the Award or not. In any case, the claimants are found to be entitled for Rs.30,000/- from respondents Nos.1 and 2 with proportionate cost and interest as fixed in the Award itself i.e. at the rate of 6% per annum from the date of Application till realisation. This Appeal is accordingly allowed. In the facts and circumstances of this case, no order as to costs of this Appeal.

(M.R.Callan,J)